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Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Second session
Geneva, 2–5 June 2014
Items 3 (b) and 11 (b) of the provisional agenda

Outstanding issues: draft decisions by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol

Adoption of decisions: decisions to be taken by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol

Draft decisions by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol

Summary

The draft decisions contained in the present document were prepared by the Bureau of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment on the basis of the text agreed by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its third meeting (Geneva, 10–15 November 2013).

The format for notification under article 10 of the Protocol annexed to draft decision III/7 was initially prepared by the secretariat with support from an editorial group comprising Austria and Germany, and approved by the Working Group at its first meeting (Geneva, 24–26 April 2012).

The Meeting of the Parties is expected to review the draft decisions and agree on their adoption.

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Draft decision II/1

[*to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment at its second session*]

Reporting and the review of implementation of the Protocol

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment,

Recalling decision I/7–V/7 of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment on reporting and the review of implementation,

Also recalling article 14, paragraph 4, of the Protocol, concerning the regular review of the implementation of the Protocol,

Further recalling article 14, paragraph 7, of the Protocol, on reporting by Parties on measures they have taken to implement the Protocol,

Additionally recalling article 13, paragraph 4, of the Protocol, concerning reporting by Parties on their application of article 13 on policies and legislation,

Recognizing that regular reporting by each Party provides important information that facilitates the review of compliance under the Protocol and thereby contributes to the work of the Implementation Committee,

Recognizing also that the report of each Party provides useful information to other countries within and beyond the United Nations Economic Commission for Europe region that facilitates their efforts to implement and accede to the Protocol,

Having analysed the reports provided by Parties in response to the questionnaire for the reporting system,

Expressing concern that the following States Parties that were Parties to the Protocol during the period under review have not yet responded to the questionnaire: Luxembourg, Montenegro and Portugal,

Strongly emphasizing the importance of the timely submission of reports,

1. *Welcomes* the reports by Parties on their implementation, which have been made available on the website of the Convention;

2. *Adopts* the First Review of Implementation of the Protocol as contained in document ECE/MP.EIA/SEA/2014/3, and requests the secretariat to arrange its publication in an appropriate form;

3. *Notes* the findings of the First Review of Implementation of the Protocol, including the following possible weaknesses or shortcomings and areas for further improvement in the Protocol's implementation by Parties:

(a) A frequent lack of definition and different understanding of several key terms used in the Protocol, such as "plans and programmes", "environmental, including health, effects", "small areas at local level", "minor modifications", "significant effects" and "reasonable alternatives";

(b) Difficulties related to the identification of plans and programmes that are within the field of application under article 4;

(c) Difficulties related to the determination of the contents and the level of detail of the environmental report, according to article 7 (para. 2 (b));

(d) Some confusion as to the contents of the final decision (art. 11), and in particular with respect to whether it should contain requirements relating to monitoring;

(e) A possible need to clarify the scope and practical application of monitoring, according to article 12;

(f) The need for bilateral agreements or other arrangements to facilitate transboundary consultations between Parties, in particular to address language-related issues, time frames, public participation and the interpretation of various terms;

(g) A continuing need to improve awareness and capacity in the implementation of the Protocol, including to clarify responsibilities of the authorities involved, e.g., with respect to consultations and public participation;

(h) A frequent lack of a central registry or database of national strategic environmental assessment (SEA) procedures, which made reporting on SEAs by sector difficult.

4. *Requests* the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the First Review of Implementation, and requests the Implementation Committee to take these into account in its work;

5. *Urges* Luxembourg, Montenegro and Portugal to provide the overdue responses to the questionnaire, and requests the secretariat to make them available on the Convention website;

6. *Requests* the Implementation Committee to simplify, where appropriate, the current questionnaire to provide a modified version of the questionnaire on the implementation of the Protocol during the period 2013–2015, for consideration by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment and for circulation by the secretariat thereafter;

7. *Further requests* the Implementation Committee to take into account the suggestions provided by Parties for improving the questionnaire and the report;

8. *Decides* that Parties to the Protocol shall complete the questionnaire as a report on their implementation of the Protocol during the period 2013–2015, taking note of the obligations to report arising from article 14, paragraph 7, and article 13, paragraph 4, of the Protocol;

9. *Urges* Parties to report by the deadline to be agreed by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment;

10. *Requests* the secretariat to post the lists of domestic and transboundary SEA cases included in the answers to the questionnaire on the website of the Convention, unless the responding Party does not agree;

11. *Further decides* that a draft review of implementation of the Protocol during the period 2013–2015 based on the reports by Parties will be presented at the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, and that the workplan shall reflect the elements required to prepare the draft review;

12. *Also requests* the secretariat to post the review of implementation of the Protocol and national reports on the website of the Convention in the languages in which they are available.

Decision II/6

[*to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment at its second session*]

Aligning the authentic language versions of the Protocol on Strategic Environmental Assessment

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment,

Aware that discrepancies between the three authentic language versions of the Protocol on Strategic Environmental Assessment have been identified in the course of the implementation of the Protocol,

Concerned that such discrepancies might lead to different interpretations and inconsistencies in the application of the Protocol by its Parties,

Determined to ensure the full alignment of the three authentic texts of the Protocol,

1. *Invites* the secretariat to arrange for a review of the text of the three authentic language versions of the Protocol by the United Nations, which would list all the inconsistencies;

2. *Establishes* an ad hoc task force with a mandate:

(a) To consider the possible inconsistencies,

(b) To determine whether each possible inconsistency merely reflects technical errors or may raise issues of interpretation;

(c) To elaborate proposals for consideration by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment on how to address such inconsistencies;

3. *Decides* that the task force should work electronically and deliver its proposals for consideration to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment by 2016;

4. *Requests* that, based on the findings of the task force, the Working Group suggest appropriate ways for addressing the identified inconsistencies by end of 2016.

Draft decision II/7

[*to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment at its second session*]

Format for notification under the Protocol

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment,

Recalling article 10 of the Protocol,

Also recalling its decision I/2 on points of contact, format for notification and focal points and decision V/9–I/9 of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment on the adoption of the workplan,

Having considered the draft format for notification under article 10 of the Protocol, prepared by the secretariat with the support of an editorial group comprising Austria and Germany,

1. *Adopts* the format for notification set out in the annex to this decision;

2. *Recommends* Parties to use the format to the extent possible when transmitting a notification according to article 10 of the Protocol.

Annex
Format for notification under article 10 of the Protocol on Strategic Environmental Assessment

I. Background

1. At its first session, the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment invited the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment to prepare a revised format for notification according to article 10 of the Protocol, to be presented at the second session of the Meeting of the Parties to the Protocol (ECE/MP.EIA/SEA/2, decision I/2, para. 2). This document has therefore been prepared by the secretariat, with the support of an editorial group comprising Austria and Germany, as indicated in the workplan for the Convention and the Protocol (see ibid., decision I/9 and V/9). The document was approved by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its first meeting (Geneva, 23–26 April 2012).

2. This document describes the legal requirements for notification and transboundary consultations as set out in article 10 of the Protocol, provides general principles regarding the level of information needed for notification and includes a basic example format for notification.

II. Legal requirements for transboundary consultations

3. Article 10 of the Protocol sets out the requirements for transboundary consultations. It defines whether notification is needed (para. 1), what it should contain (para. 2), the procedure for entering into consultations (para. 3) and necessary arrangements for consultations (para. 4).

4. According to paragraph 1 of the Protocol, notification is required when the implementation of a plan or programme is likely to have significant transboundary environmental effects. The Party of origin shall notify when it considers that that plan or programme is likely to have significant transboundary effects, but also the Party likely to be significantly affected can request to be notified. The notification shall be as early as possible before the adoption of the plan or programme.

5. Paragraph 2 defines what the notification shall contain. The notification shall include, inter alia, the draft plan or programme and the environmental report, including information on its possible environmental, including health, effects; and information regarding the decision-making procedure, including an indication of a reasonable time schedule for the transmission of comments. But this is not an exhaustive list; it may also be advisable to submit other relevant information, such as public information materials, possible background documents or a request for information on the environment of the potentially affected area.

6. Paragraph 3 requires the affected Party to indicate whether it wishes to enter into consultations with the Party of origin. If the affected Party so wishes, the Parties shall enter into consultations concerning the likely transboundary environmental effects and measures envisaged to prevent, reduce or mitigate adverse effects.

7. Paragraph 4 specifies the obligation to agree on detailed arrangements to ensure that the authorities and the public concerned of the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report.

8. Bearing in mind that the notification shall, according to paragraph 1, take place as early as possible, a Party of origin should consider notifying an affected Party already during the procedure specified in article 6 (scoping) for the determination of the relevant information to be included in the environmental report. If notification already takes place during this scoping phase, the documents required under paragraph 2 (a) of article 10 should be submitted as soon as they have been completed.

III. Level of information required

9. The specific information necessary for the notification may vary between plans and programmes as well as depending on the scope, extent and foreseen effects of the plan or programme in question. Thus article 10 of the Protocol sets only a general framework for defining the necessary information.

10. As the notification is to be prepared by the designated authority in the country where the plan or programme is prepared, this authority has to define in detail what information is to be included in the notification form in order to fulfil the requirements of article 10, paragraph 2. This may be done on a case-by-case basis or defined in legislation or guidance. Parties might also agree bilaterally always to provide some standard information for certain types of plan and programme. Regardless of the approach chosen, the Party of origin should ensure, when deciding on what information is necessary, that it will be sufficient at least for:

(a) The affected Party to make a decision on its participation in the transboundary consultations procedure;

(b) The public and authorities in the potentially affected Party to participate in the procedure and to provide comments;

(c) The affected Party to understand the information needed from it to assist in the assessment of transboundary environmental, including health, effects.

IV. Sample format for notification

11. Notification can be made in the form of a letter, table or combination of these two. This document provides below an example of a table form for notification. It covers the main information requirements of a notification, but does not aim to be exhaustive and thus should be modified to suit a specific plan or programme. The form may also serve as a checklist for preparing a notification in a letter form. If used alone, the table will nonetheless likely need to be accompanied by a cover note identifying the addressee and the purpose of the communication.

12. The authorities preparing the notification may also wish to review the format for notification for the Convention (ECE/MP.EIA/2, annex IV, decision I/4) for additional information on notification.

Notification of an affected Party of a proposed plan or programme under article 10 of the Protocol on Strategic Environmental Assessment

Description of information to be included	*Information*
General information on the plan or programme	
Name of the plan or programme	
Type and sector of plan or programme (e.g., local land-use plan, national energy strategy)	
Territorial coverage (e.g., regional, national)	
Main content and purpose of the plan or programme (e.g., framework setting for projects, determination of use of land) and its links with other plans or programmes	
Whether the plan or programme is binding	Binding Not binding
Submitted documents	
Draft plan or programme	Enclosed Not enclosed (in which case, date by it will be transmitted)
Environmental Report	Enclosed Not enclosed (in which case, date by it will be transmitted)
Other documents (with description)	

Description of information to be included	*Information*
Languages into which documents are or will be translated	
Description of the decision-making procedure and of the strategic environmental assessment (SEA) procedure in the Party of origin	
Description of the phases of the planning procedure	
Legal basis for the planning procedure (quoting the regulation or other legal basis)	
Description of the phases of the SEA procedure, including participation of the affected Party	
Legal basis for the SEA procedure (quoting the regulation or other legal basis)	
Present phase of the planning procedure and of the SEA procedure	
Time schedule of the foreseen continuation of the planning procedure and of the SEA procedure	
Process and timing of the possible adoption of the plan or programme	
Information on the public participation process in the Party of origin	
Opportunities for the public to participate:	
• Start and end dates for the public to provide comments on the environmental report and draft plan or programme	
• How the public is informed of the public participation process	
• Whether a public hearing is organized and, if so, when	Yes (in which case, the date of the hearing) No
• How the public is informed of the adoption of the plan or programme and how the information specified in article 11, paragraph 2, is made available	
Expected time schedule for transmittal of comments and questions by the public of the affected Party on the draft plan or programme and on the full environmental report	
Involved authorities in the Party of origin	
Authority responsible for the planning procedure	
Authority/institution responsible for the adoption of the plan or programme	
Authority responsible for the SEA procedure	

Description of information to be included	*Information*
Authority/institution responsible for the SEA decision (if applicable)	
Affected Parties	
List of Parties to which notification has been sent	
Point of contact for the transboundary procedure	
Authority responsible for coordinating activities relating to the transboundary SEA procedure: name, address, e-mail, telephone and fax numbers	
Deadlines for response to the notification	
Deadline for responding to indicate whether the affected Party wishes to participate	
Deadline for transmission of comments on the draft plan or programme and the full environmental report by authorities of the affected Party (if different from above)	
Means of communication	
Means by which letters from the Party of origin are sent (e.g., e-mail, fax, post, via embassy)	
Means by which affected Parties are asked to send their letters	

Draft decision II/8

[*to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment at its second session*]

Good practice recommendations on public participation in strategic environmental assessment

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment,

Recalling its decision I/4 on public participation in strategic decision-making, and decision V/9–I/9 of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment on the adoption of the workplan,

Recalling also decisions II/3 and III/8 of the Meeting of the Parties to the Convention on the guidance on public participation in environmental impact assessment in a transboundary context,

Convinced that public participation forms an essential part of strategic environmental assessment,

Noting that for many Parties, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) contributes to the strengthening of public participation in their implementation of the Protocol on Strategic Environmental Assessment,

Aware of the recommendations on promoting effective public participation in environmental decision-making prepared under the Aarhus Convention (ECE/MP.PP/2014/8),

Having considered the outcome of the workshop on public participation in strategic decision-making organized jointly with the task force on public participation under the Aarhus Convention (Geneva, 29–30 October 2012) in accordance with the Protocol and with article 7 of the Aarhus Convention,

Aware of the benefits of synergies and continuous cooperation with relevant bodies under the Aarhus Convention to ensure the consistent application of the relevant provisions under the two treaties;

1. *Recognizes* the need for guidance to assist competent authorities and the public in organizing effective public participation in strategic environmental assessment;

2. *Welcomes* the development of draft good practice recommendations by a consultant to the secretariat, the Bureau and the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment, taking into account the feedback received at the joint workshop and the outcomes of consultations of stakeholders under the Protocol on Strategic Environmental Assessment and the Aarhus Convention;

3. *Recognizes* that these recommendations also reflect the provisions of the Aarhus Convention,

4. *Endorses* the Good Practice Recommendations on Public Participation in Strategic Environmental Assessment set out in document ECE/MP.EIA/SEA/2014/2;

5. *Recommends* that the Parties take into account the contents of the Good Practice Recommendations when applying the Protocol;

6. *Calls on* Parties to distribute the Good Practice Recommendations to national authorities, experts on strategic environmental assessment, non-governmental organizations and other stakeholders and to support them in ensuring public participation in strategic environmental assessment;

7. *Invites* Parties to provide information to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment on the usefulness of the Good Practice Recommendations and any suggestions for their future development;

8. *Also invites* Parties and non-Parties to provide further examples of good practice to the Convention secretariat to be made available on the Convention website;

9. *Proposes* that the Good Practice Recommendations be used in the capacity-building activities included in the workplan.